



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201347024**

Release Date: 11/22/2013

Date: August 28, 2013

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4911.00-00

Legend:

M =
Y =
Program =

Dear :

We have considered your letter dated September 2, 2010 (as supplemented by your letters dated April 26, 2012, and June 14, 2013) in which you request a ruling under § 4911(d) of the Internal Revenue Code.

Facts:

You, M, are organized as a non-profit corporation under state law, are recognized as an organization exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code, and qualify for public charity status under § 170(b)(1)(A)(vi). You were formed for the purpose of raising funds to support community based education, screening and treatment programs, and medical research for the treatment and cure of Y.

You are the central parent of 123 subordinate organizations ("the Affiliates"), all of which are also exempt from tax under § 501(c)(3) pursuant to a group exemption letter. Your Affiliates file a group return under § 1.6033-2(d) of the Income Tax Regulations. Each Affiliate is a separately incorporated non-profit corporation and must adopt their own separate Articles and Bylaws, consistent with your mission.

Pursuant to § 8.04 of your Amended and Restated Bylaws, the Affiliates are required to adhere to your policies and procedures, as contained in your Affiliate Policies (the "Policies"), and every two years each Affiliate must also enter into an Affiliation Agreement (the "Agreement") with you. The Agreement is a formal, enforceable and legally binding contract between you and the Affiliate. The Agreement sets forth the specific geographic area for which the Affiliate may further your purposes, as well as the programs, activities, fundraising, grants and operations the Affiliate will carry out in that regard.

You and your Affiliates fulfill your charitable mission primarily through the work of more than 70,000 volunteers around the country and throughout the world. You receive much of your financial support through certain annual events. All public contributions in connection with these events are made initially to the Affiliates. Per the Policies, each Affiliate is primarily responsible for its own fund-raising efforts. Each Affiliate is required to annually distribute to you at least 25 percent of its net annual revenue received from all Affiliate activities and events to fund the Program, whose grants are awarded at the national level, in keeping with its exempt mission.

You and your Affiliates also conduct direct and grass-roots lobbying to encourage legislation at the federal and state level that would further and/or fund education and awareness into a cure for Y. You have elected to have your lobbying activities measured under § 501(h) and reported on your Form 990. Further, each Affiliate also has elected to have its lobbying activities measured under § 501(h).

In the context of your ruling request, the phrase "volunteer staff, officers, board and committee members of the Affiliates" refers to and is limited to any individual that fills a specific, defined, role (e.g. President, Vice President, Director) with respect to an Affiliate who is not compensated for his or her services to the organization. This would include any non-compensated officers or other staff member of the Affiliate, as well as board and committee members of the Affiliate. The phrase is not meant to include all the volunteers that donate their time to the Affiliates during the year.

Ruling Requested

You have requested the following ruling:

Communications between M and the paid and volunteer staff, officers, board and committee members of the Affiliates constitute communications with "members" of M for purposes of IRC section 4911(d).

Law

Section 4911(a) imposes a tax on the excess lobbying expenditures of any organization with respect to which an election under § 501(h) (relating to lobbying expenditures by public charities) is in effect for the taxable year.

Section 4911(c)(1) provides that the term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in subsection (d)).

Section 4911(d)(1) provides that, except as provided in paragraph (2), the term "influencing legislation" means—

- (A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and
- (B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

Section 4911(d)(2)(D) provides that the term "influencing legislation", with respect to an organization, does not include communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications described in paragraph (3).

Section 4911(d)(3)(A) provides that a communication between an organization and any bona fide member of such organization to directly encourage such member to communicate as provided in paragraph (1)(B) shall be treated as a communication described in paragraph (1)(B).

Section 4911(d)(3)(B) provides that a communication between an organization and any bona fide member of such organization to directly encourage such member to urge persons other than members to communicate as provided in either subparagraph (A) or subparagraph (B) of paragraph (1) shall be treated as a communication described in paragraph (1)(A).

Section 7701(a)(1) provides that the term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

Section 56.4911-5(a) of the Miscellaneous Excise Taxes for Public Charities Regulations provides that, for purposes of § 4911, expenditures for certain communications between an organization and its members are treated more leniently than are communications to nonmembers.

Section 56.4911-5(b) provides that expenditures for a communication that refers to, and reflects the views on, specific legislation are not lobbying expenditures if the communication satisfies the following requirements:

- (1) The communication is directed only to members of the organization;
- (2) The specific legislation the communication refers to, and reflects the views on, is of direct interest to the organization and its members;
- (3) The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization); and
- (4) The communication does not directly encourage the member to engage in grass roots lobbying (whether individually or through the organization).

Section 56.4911-5(f)(1) provides that, for purposes of the regulations under § 4911, a member of an electing public charity includes a person who (i) pays dues or makes a contribution of more than a nominal amount, or (ii) makes a contribution of more than a nominal amount of time.

Analysis

Section 4911(d)(2)(D) provides an exception to the definition of "influencing legislation" for communications between an organization and its "bona fide members" with respect to legislation of direct interest to the organization and such members. Under § 56.4911-5, certain communications that would be treated as grass roots lobbying if they were directed to nonmembers are not treated as lobbying if they are directed solely to members. Section

56.4911-5(f)(1) provides that a member of an organization is a person who pays dues or makes a contribution of more than a nominal amount or makes a contribution of more than a nominal amount of time. Section 7701(a)(1) provides that the term person is construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

Your Affiliates are primarily responsible for all fund-raising. They pay at least 25 percent of their net annual revenue to you in support of your national grant making activities. In addition, your Affiliates support your mission through their activities and support your basic policies and purposes on a full time basis. Based on the Affiliates' substantial support of you in terms of both time and money, the Affiliates would be considered members of your organization within the meaning of § 56.4911-5(f)(1).

Furthermore, as a matter of common law, corporations act through their agents and employees. You have clarified that the phrase "volunteer staff, officers, board and committee members of the Affiliates", as used in your ruling request, refers and is limited to any individual that fills a specific, defined role (e.g. President, Vice President, Director) with respect to an Affiliate who is not compensated for his or her services to the organization, including any non-compensated officers or other staff members of the Affiliate as well as board and committee members of the Affiliate. The term does not include the thousands of volunteers who donate their time to the Affiliates. Insofar as the paid and volunteer staff, agents, officers, board and committee members of the Affiliates are acting as agents or employees of the Affiliates, they will also be treated as members of your organization within the meaning of § 56.4911-5(f)(1).

Consequently, communications between you and the paid and volunteer staff, agents, officers, board and committee members of the Affiliates, to the extent that they are communications described in § 56.4911-5(b), shall fall within the exception to the term "influencing legislation" provided under § 4911(d)(2)(D).

Conclusion

Accordingly, in light of the above we rule as follows:

The Affiliates, as well as the paid and volunteer staff, officers, board and committee members of the Affiliates shall be treated as bona fide members of M for purposes of § 4911(d)(2)(D) and § 56.4911-5(b).

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any

section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven B. Grodnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437